

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 339 OF 2002.

Mrs. Maria Sonia Elvira
Anunciacao Viegas e Lemos
also known as Mrs. Sonia
Lemos, r/of Candolim
Sinquerim.

... Petitioner.

Versus

1. Mr. Nicolau Lourenco Severino
Pereira, s/o late Luis Jose
Pereira, and wife,
2. Mrs. Glafina Joana Pereira
3. Miss Jane Pereira,
4. Miss Anita Pereira,
5. Miss Yvonne Pereira,
6. Mr. Olwyn Pereira,
7. Mr. Oswald Pereira,
8. Miss Ashly Pereira,
All major of age, r/o
House No. 98/1, Sinquerim,
Candolim.
9. Mrs. Cristalina Pereira e
Sequeira, d/o late Mrs.
Luzereta Pereira, r/o 180/A,
Block 5, Foman Nagar, Danpada
Khar, Bombay-400 052.

... Respondents.

Mr. M.S. Usgaonkar, Senior Advocate with Mr. Valmiki
Menezes, Advocate for the Petitioner.

Mr. J. Vaz, Advocate for the Respondents 1 to 8.

Coram: P.V. HARDAS, J.

Date: 16th January 2003.

ORAL JUDGMENT.

Rule. Rule made returnable forthwith. By
consent of parties, this petition is taken up for final
hearing.

2. This petition has been filed against the
Order, dated 14th December 2001, passed by the 1st

Additional Civil Judge, Senior Division, Mapusa, in Special Civil Suit No. 198/96/Sr/I, on Civil Miscellaneous Application No. 281/01/Sr/I and Civil Miscellaneous Application No. 279/01/Sr/I, whereby the learned trial Court dismissed the Civil Miscellaneous Application No. 281/01/Sr/I filed by the present petitioner and allowed the Civil Miscellaneous Application No. 279/01/Sr/I filed by the present respondents for amendment.

3. Mr. Usgaonkar, learned senior counsel appearing on behalf of the petitioner/plaintiff, has invited my attention to the relief which is claimed in the suit filed by the plaintiff. The relief is in respect of the suit property bearing Survey No. 104/1. In paragraph 2 of the plaint it is stated that the suit property, namely, Survey No. 104/1 is leased to Indian Resorts Hotels Pvt. Limited by the predecessors of the plaintiff. In paragraph 4 it is stated that the suit property is part of a much larger property and consists of various survey numbers. While describing the entire property, certain survey numbers had been inadvertently omitted. The petitioner, therefore, filed an application for amendment of the plaint seeking to amend paragraph 4 by giving the other survey numbers and for correcting the area of the entire suit property. The petitioner also sought amendment by giving certain

additional details in support of her claim.

4. The learned trial Court dismissed the application for amendment principally on the ground that by virtue of the amendment, the plaintiff wants to add survey numbers 82, 83 and 984 and by adding the said survey numbers, the plaintiff was trying to increase the area of the suit property. The learned trial Court also found that the plaintiff had not sought any relief in respect of the said survey numbers and, therefore, according to the learned trial Court, no declaration could be granted to the plaintiff in respect of these survey numbers.

5. Mr. Usgaonkar, the learned senior counsel appearing on behalf of the petitioner, has referred to the application for amendment and the plaint and has urged before me that the observation of the learned trial Court is wholly unfounded. The plaintiff is not seeking to enlarge or add on to the suit property. All that the amendment does is to properly describe the suit property, which comprises of various survey numbers, by incorporating the proposed survey numbers. Obviously, since no reliefs are claimed in these survey numbers, the prayer clause is not amended.

6. Mr. Vaz, appearing on behalf of the

respondents, has supported the Order of the learned trial Court and has urged that the application filed by the petitioner deserves to be dismissed.

7. The learned trial Court has rejected the application principally on the ground that the plaintiff was seeking to enlarge the suit area. Perusal of the application for amendment and paragraph 4 of the plaint clearly show that this is not so. In paragraph 4 it is stated that the suit property is part of a much larger property comprising of various survey numbers. The proposed amendment merely seeks to properly describe the entire area of which the suit area is a part. The petitioner is not seeking any declaration in respect of the survey numbers sought to be incorporated in paragraph 4. The learned trial Court has not examined the other proposed amendments. The Order of the learned trial Court rejecting the application for amendment is unsustainable in law. The reason given for rejection of the application, on perusal of the plaint and the application for amendment, is found to be wholly unsustainable.

8. For the reasons which are given above, the Writ Petition is allowed and the Order impugned in the present petition is, hereby, quashed and set aside. Rule is made absolute in terms of the prayer clause with

no order as to costs.

(P.V. HARDAS)
JUDGE.

ed's.